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## LEGISLATIVE ETHICS

ETHICAL PRINCIPLES AND GUIDELINES AND  
OPINIONS OF THE LEGISLATIVE ETHICS COMMITTEE  
1975 - 1996

Issued by:

the Legislative Ethics Committee

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**The Legislative Ethics Committee has reviewed and refined advisory opinions previously rendered to individual legislators. As these edited advisory opinions have not been previously released to the General Assembly members as a whole, the Committee issues these opinions to be effective on October 1, 1996.**

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# LEGISLATIVE ETHICS

## ETHICAL PRINCIPLES AND GUIDELINES AND OPINIONS OF THE LEGISLATIVE ETHICS COMMITTEE

### ETHICAL PRINCIPLES AND GUIDELINES

- (1) It is inappropriate to use excessively the State Telephone Network, the legislative computer system, and other State equipment for personal and business reasons. These services and this equipment shall be used primarily for legislative purposes rather than personal and business purposes.
- (2) A legislator shall not use his mailing privileges to mail personal or nonlegislative business related correspondence.
- (3) A legislator shall not copy or have copied nonlegislative materials using State equipment in the Legislative Printing Office; provided that a legislator may copy nonlegislative materials on the duplicating machines if he or she reimburses the Legislative Disbursing Office for the cost of that duplication.
- (4) A legislator mentioning or permitting another to mention the legislative office he or she holds in commercial advertising would improperly take advantage of the confidence and respect accorded that office and that action would therefore be unethical.
- (5) It is inappropriate for any legislator to use or allow another to use his official legislative stationery paid for by the State for soliciting campaign contributions to or thanking contributors to the legislator's political campaign. A legislator may use a facsimile of the legislator's official legislative stationery in soliciting campaign contributions or thanking contributors to the legislator's political campaign as permitted under paragraph (6) of these Ethical Principles and Guidelines.
- (6) When a legislator uses a facsimile of his or her stationery for non-legislative purposes not prohibited under these Principles and Guidelines, the facsimile shall bear a clear disclaimer indicating that the stationery was not printed or mailed at State expense.

**OPINION 001**

Question: Would the employment of someone as a consultant to the Senate and House Insurance Committees who is currently chair of the insurance research center at an out-of-state university which several years earlier received a \$25,000 grant from the North Carolina Association of Insurance Agents create a potential conflict of interest?

Opinion: A person's previous involvement with an out-of-state university's insurance research center that several years earlier had received a \$25,000 grant from the North Carolina Association of Insurance Agents would not cause that person to be biased as a consultant to the North Carolina Senate and House Insurance Committees.

**OPINION 002**

Question: May a lawyer/legislator continue to serve as chair of a substantive standing committee and cochair of a legislative oversight committee supervising State-regulated industries when he or she has joined as a partner an international law firm whose clients include a large national company which owns a subsidiary in North Carolina and whose regulations are overseen by the same committees? The legislator indicated his intention not to discuss, debate, or vote on any matter directly affecting the firm's clients.

Opinion: Yes, the legislator may continue to serve as a member and cochair of the committee. G.S. 120-88 provides, in part: "When a legislator must act on a legislative matter as to which he has an economic interest, personal, family or client, he shall consider whether his judgment will be substantially influenced by the interest and consider the need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature. If, after considering these factors, the legislator concludes that an actual economic interest does exist which would impair his

independence of judgment, then he shall not take any action to further the economic interest and shall ask that he be excused if necessary by the presiding officer in accordance with the rules of the respective body.”

The decisive word in the statute in “substantially”. In view of the size of the law firm and the indirect relationship of that firm to the subsidiary revealed, there is no reasonable basis for belief that judgment in actions as member and cochair of the committees would be substantially influenced by that relationship.

The Committee notes with approval legislator’s stated intention not to discuss, debate, or vote on any matter directly affecting the firm’s client.

### **OPINION 003**

Question: May a CPA/legislator’s independent firm contract with the State Auditor to conduct and complete annual audit requirements for the State? Legislator is also a member of a legislative commission having administrative powers?

Opinion: (1) Independence of Judgment of Legislator—G.S. 120-88 requires a legislator, when acting on a legislative matter in which he has an economic interest, personal family, or client, to consider whether his judgment would be “substantially influenced by the interest” and the need for his or her particular contribution to the effective functioning of the General Assembly. The legislator must then excuse him/herself from any action advancing the interest if he or she finds that an actual economic interest does exist which would impair his independence of judgment.

(2) Perception of Improper Influence—G.S. 120-86 provides: “no person shall offer or give to a legislator or a member of the legislator’s immediate household, or to a business with which he is associated....anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that such legislator’s vote, official actions or judgment would be influenced thereby, or where it could reasonable be inferred that the thing of value would influence the legislator in the discharge of his duties.”

“A business with which he is associated” means one, among other matters, of which he or a member of his immediate family is an owner, partner, or employee. G.S. 120-85(l)

There are then two concerns set forth in the Legislative Ethics Act. The first is whether, in the legislator’s opinion, the firm’s being hired to perform accounting services for the State Auditor would compromise his or her independence of judgment of the State Auditor and the functioning of his office; and the second is whether the firm’s contract with the State Auditor’s Office could result in the reasonable inference that legislator would be influenced in the discharge of legislative duties.

- (3) Dual Office Holding Prohibition—G.S. 128-1 prohibits dual office holding, except as provided in G.S. 128-1.1 Subsection (b) of the latter statute allows a person holding an elective office in State or local government to hold concurrently appointive office, place of trust or profit in State or local government. Thus, if by extension, the firm’s contract with State Auditor would constitute a place of trust or profit in State or local government, it would still be permitted under dual office holding provisions. Parenthetically, the Attorney General’s Office has traditionally hired local attorneys, including legislators and their law firms, to perform title searches relating to the acquisition of real property.
- (4) Special Nature of State Auditor’s Function—The function of the State Auditor is a special one. G.S. 137-64.8 requires the Auditor to maintain independence in the performance of his duties and states that, except as provided by law, no state agency shall have authority to limit the scope, direction, or report of an audit.

In recognition of that function, the General Assembly has, by statute (G.S. 147-64.12), prohibited the Auditor and his employees from serving in any capacity on an administrative board, commission or any other organization that they have the responsibility or authority to audit. The statute sets forth as its purpose “to preserve the independence and objectivity of the audit function.”

This legislator also serves as a member of a legislative commission having administrative powers, whose records are audited by the Office of the State Auditor. Although

CPA/legislator and firm would not be an employee of the State Auditor's Office, the stated purpose of the G.S. 147-74.12 would be contravened and frustrated by the contemplated contractual relationship and, therefore, would be unethical.

#### **OPINION 004**

Question: Are there any legal or ethical impediments to a member of the General Assembly responding to a request for proposal of the University of North Carolina to act as an auctioneer for surplus equipment which the University plans to sell?

Opinion: There are no legal prohibitions on this matter nor any statutes, standards or guidelines on legislative ethics in this regard that have been adopted.

#### **OPINION 005**

Question: Does a conflict of interest exist for a legislator who is a real estate broker to sponsor legislation which would permit a broker to contract with a sales person whereby the sales person agrees to reimburse the broker the cost of workers' compensation insurance?

Opinion: Under existing law real estate broker employees are not allowed to pay any portion of workers' compensation premiums which protect them. The proposed legislation would allow a broker to enter into a contract with its sales person for the latter to reimburse the broker for workers' compensation coverage. The legislator's firm employs fewer than the minimum number of employees for mandatory coverage under the workers' compensation law.

The passage of such legislation and the legislator/broker entering into such a contract with a sales person would not affect the legislator's economic interest. Therefore, there would be no impropriety on the legislator's part by sponsoring the legislation.

## **OPINION 006**

Question: Is there any ethical violation if a lawyer/legislator accepts employment as legal counsel to a regional economic development commission and/or to a non-profit corporation which solicits, receives, and disburses funds associated with the regional development efforts? The legislator sponsored legislation affecting the operations of the agency in the previous legislative session.

The commission was created and funded by the General Assembly and is expected to continue to be funded in the same manner. It is also possible the legislator/attorney would be asked to sponsor other legislation pertaining to the commission and its operation.

Opinion: It is inappropriate for a legislator to accept employment with a commission or an agency tied closely to the commission when the legislator has sponsored legislation affecting the commission in the previous legislative session and contemplates doing so in the future as the employment would compromise the legislator's reputation and the image of the General Assembly.

## **OPINION 007**

Question: Is it inappropriate for a legislator who is the president and owner of a wholesale specialty supply house supplying a particular industry to sponsor and/or support (1) legislation eliminating the sales tax on specialty supply sales to a segment of that industry and (2) legislation modifying licensing fees for wholesale specialty supply distributors to that industry?

Opinion: General Assembly members should not only avoid conflicts of interest but also the appearance of these conflicts so that the legislative institution and its members are not thereby denigrated. Citizens might reasonably believe that there is a conflict of interest in the legislator's introduction of either of the two measures. Since there would be the appearance of a conflict of interest, it is recommended that the legislator not sponsor either. The legislator must resolve whether to actively support or vote on these matters after a self-examination to determine whether an actual conflict of interest exists and, if so, whether it would impair independence of judgment in acting.

## **OPINION 008**

Question: Is it inappropriate that a bill affecting an industry be referred to a substantive standing committee consisting of some members who may have a financial interest in that industry?

Opinion: It is not inappropriate. This is a discretionary matter involving the organizational structure and process of each legislative chamber.

## **OPINION 009**

Question: Is it inappropriate that committee members who are officers or employees of or have financial interest, reportable in the legislative economic interest statements, in businesses regulated by the State serve on and participate in the actions of substantive standing committees overseeing that State regulation?

Opinion: It is not inappropriate. Each legislator has the personal responsibility to determine, under G.S. 120-88, whether his or her independence of judgment is impaired by a financial interest. The individual legislator may ask the Legislative Ethics Committee for an advisory opinion if he or she is in doubt.

## **Use of Legislative Stationery and Postage**

*(Also see Ethical Principles and Guidelines (2), (3), (5), and (6) above.)*

## **OPINION 010**

Question: May a legislator use official legislative stationery to request advice of others in the same profession on legislation affecting that profession and to urge the professionals to join a PAC?

Opinion: A legislator may use official legislative stationery to request the advice of others in the same profession on legislation. A legislator may not use official legislative stationery to urge anyone to join a PAC but may use a facsimile of the stationery if the stationery bears a clear disclaimer that indicates that the stationery was not printed or mailed at State expense.

### **OPINION 011**

Question: May a legislator use official legislative stationery to solicit support from lobbyists for a social event for the members and staff of the General Assembly?

Opinion: A legislator's stationery may not be used for this purpose. A legislator may use a facsimile of the legislator's official stationery for this purpose if the facsimile bears a clear disclaimer that it was not printed or mailed at State expense.

### **OPINION 012**

Question: May a legislator reproduce a letter soliciting support for an environmental organization on legislative stationery if the costs of reproducing and mailing are paid by the organization?

Opinion: The Ethical Principles and Guidelines [set forth herein on page 2] limit the mentioning of legislative status *only* in commercial advertising.

### **OPINION 013**

Question: May a legislator use legislative stationery and postage to (1) send letters of sympathy to constituents who have a death in the family; (2) send letters to constituents who do something outstanding or achieve a great accomplishment; and (3) send letters of appreciation to individuals and groups of constituents who have invited the legislator to speak?

Opinion: It is appropriate to use legislative stationery and postage to send letters of sympathy and letters of congratulations to constituents.

There is no problem with using legislative stationery and postage to send letters to individuals and groups in appreciation for invitations as long as the correspondence neither solicits nor thanks campaign contributors for their contributions.

*(Also see Ethical Principles and Guidelines (4) above.)*

**OPINION 014**

Question: May a legislator who is the senior vice president of a construction firm which is acting as the general contractor for a resort development allow his or her legislative status to be used in an advertising brochure for the resort?

Opinion: The legislator may not. Among the benefits accruing to those holding office as North Carolina State legislators are the confidence and respect of his or her fellow citizens. A legislator mentioning or permitting another to mention the office he or she holds in commercial advertising would improperly take advantage of the confidence and respect accorded that office. The office would thereby be demeaned. The legislator's actions of mentioning or permitting another to mention the legislative status in commercial advertising would therefore be unethical.

**OPINION 015** (Also see 016)

Question: May a legislator use title as a legislator in an endorsement of a retail business?

Opinion: The Ethical Principles and Guidelines [set forth herein on page 2] limit the mentioning of legislative status in commercial advertising.

## Use of State Telephones and Mailing Privileges

*(Also see Ethical Principles and Guidelines (1) above.)*

### **OPINION 016**

- Question:
- (1) May a legislator use the State telephone for personal and business calls as long as reimbursement is made for those calls?
  - (2) May a legislator mail personal and business mail through the legislative post office as long as postage is supplied by the legislator?

Opinion: The Committee promulgated the Ethical Principles and Guidelines [set forth herein on page 2] mindful of the part-time service of citizen/legislators.

- (1) The guideline regarding use of the State telephone network leaves to the individual legislator's discretion and sense of propriety the determination of excessive use of the telephone for personal and business-related communications.
- (2) Anyone may use the legislative post office through which they may deposit stamped personal or non-legislative, business-related mail. The guideline speaks to use of legislators' mailing privilege of sending official correspondence using postage supplied by the State only.

### **OPINION 017**

Question: May a legislator use the State telephone to make calls to the legislator's personal home and business telephones and answering machines to retrieve messages and concerns from constituents?

Opinion: This use of the State telephone system constitutes conducting appropriate legislative business.